

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18227
[Redacted],)	
)	DECISION
Petitioners.)	
_____)	

On June 8, 2004, the Income Tax Audit Division of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing additional income tax, penalty, and interest for the years 2000, 2001, and 2002 in the total amount of \$3,859.

On August 9, 2004, a timely protest and petition for redetermination was filed by the taxpayers. An informal hearing was not held. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision affirming the NOD.

The taxpayers filed Idaho income tax returns in 1997, 1998, and 1999 as residents of Idaho. The taxpayers also filed as residents in the tax years 2001 and 2002. In tax year 2000, the taxpayers filed a Form 43 as nonresidents of Idaho and reported Idaho wages only. [Redacted] works as a journeyman electrician throughout [Redacted]. [Redacted] worked in Idaho for Idaho companies during the 2000 and 2002 tax years.

During a meeting between the auditor and the taxpayers on November 11, 2003, the taxpayers agreed that they were domiciled in Idaho for all tax years in review.

The taxpayers provided documentation to support unreimbursed job-related expenses claimed on their 2000, 2001, and 2002 Schedule A.

Detailed documentation (mileage logbooks, motel receipts, etc.) was provided for the 2000 tax year and verified the vehicle and travel expenses claimed for that year. The auditor included the taxpayers' union dues, assessment dues, and general clothing in the category of

business expenses, which were verified by receipts and pay stubs. All the union due receipts were not available, so the auditor estimated the total by multiplying the monthly payment of \$22 in 2000 or \$23 in 2001 and 2002 by 12 months. The auditor reclassified the remaining amount of business expense category that was not verified as other business expense and disallowed it due to lack of documentation.

In tax year 2001, the mileage documentation provided by the taxpayers totaled less than the claimed amount. The business expense deduction was allocated to union dues, assessment dues, general clothing, and other business expenses.

In tax year 2002, the documentation was severely lacking. No mileage documentation was provided. Lodging receipts were received for January through August 2002 only. Based on dates listed on the lodging receipts, the auditor calculated the number of days spent on the job as 201 and used this to estimate the meals by applying the per diem rate of \$34 per day. The business expenses were again allocated between union dues, assessment dues, general clothing, and other business expenses. The clothing in all three tax years was general clothing (shirts, pants, etc.) and therefore the deduction was disallowed.

After concluding her review of the taxpayers' tax records, the Tax Commission's auditor made adjustments to the taxpayers' returns. These adjustments can be broken out into the following categories:

1. A number of adjustments were made to the taxpayers' 2000, 2001 and 2002 Schedule A Itemized Deductions for unreimbursed employee expenses. The result of these various adjustments reduced the total itemized deductions amount. The reduction of the claimed itemized deductions resulted in a reduction of the allowable itemized deduction of \$1,629 in 2000, \$9,702 in 2001, and \$19,613 in 2002.

2. An adjustment was made to recognize all of the taxpayers' income as Idaho income for tax year 2000. This adjustment resulted in an increase of the taxpayers' adjusted Idaho taxable income of \$17,454 for tax year 2000.
3. An adjustment was made to allow the grocery credit for each personal exemption on the taxpayers' 2000 Idaho income tax return. This adjustment resulted in a \$30 credit.

In the Explanation of Items included with the NOD, the auditor stated in part:

. . . In 2001, mileage documentation you provided totaled less than the business mileage claimed. . . . No mileage documentation was provided for tax year 2002. The lodging receipts were for the January through August time period only. . . .

On August 9, 2004, [Redacted] protested.

On September 1, 2004, the Tax Policy Specialist (policy specialist) sent the taxpayers a letter to inform them of their alternatives for redetermining a protested NOD. A follow-up letter was sent on October 5, 2004. The petitioners did not respond to either letter.

On April 5, 2005, the policy specialist sent the taxpayers a letter asking if they still wanted a conference as requested in their protest letter. The taxpayer's did not respond to this letter.

The only issue raised by the taxpayers in this administrative protest relates to the disallowed itemized deductions. The Tax Commission's auditor carefully reviewed all the itemized deductions claimed on the taxpayers' Schedule A for 2000 through 2002. Many of the itemized deductions for unreimbursed employee expenses were disallowed or recalculated.

Within certain limitations, an employee is entitled to deduct ordinary and necessary business expenses incurred in connection with his employment. If these expenses are not reimbursed by the employer, the amount paid by the employee may be deducted as a

miscellaneous itemized deduction, subject to the 2% limitation set out in Internal Revenue Code § 67. Personal, living and family expenses do not qualify as ordinary and necessary business expenses and are not deductible except as otherwise expressly allowed in the Internal Revenue Code. I.R.C. § 262. Treas. Reg. § 1.262-1(c). Internal Revenue Regulation 1.274-5(T)(c)(1) states that the taxpayer must keep “adequate records” to substantiate the claimed business deductions. In Reinke Est. v. Comr., 46 F.3d 760 (8th Cir. 1995), the court states that in cases where the taxpayer fails to present any evidence from which the court can make an estimate, the taxpayers’ claimed deductions will not be upheld.

The taxpayers have not provided the Commission with a contrary result to the redetermination of their income and deductions [Redacted]herefore, the Commission must uphold the deficiency.

WHEREFORE, the Notice of Deficiency Determination dated June 8, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$1,228	\$0	\$337	\$1,565
2001	717	0	142	859
2002	1,451	0	193	<u>1,644</u>
			TOTAL DUE	<u>\$4,068</u>

Interest is calculated through August 17, 2005, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers’ right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]
[Redacted]

Receipt No.